

**ADDENDUM - STATUTES, RULES AND REGULATIONS**

**Statutes**

11 U.S.C. § 507(a), (a)(8)(1994) provides in pertinent part:

“(a) The following expenses and claims have priority in the following order:

....  
(8) Eighth, *allowed unsecured claims of governmental units*, only to the extent that such claims are for— . . .

- (A) a *tax* on or measured by income or gross receipts. . . .
- (B) a *property tax* . . .
- (C) a *tax* required to be collected or withheld . . .
- (D) an *employment tax* on a wage, salary, . . .
- (E) an *excise tax* . . .
- (F) a *customs duty* . . .
- (G) a *penalty* related to a claim of a kind specified in this paragraph. . . .”

29 U.S.C. §§ 1051 provides in pertinent part:

“This part shall apply to any employee benefit plan described in section 1003(a) of this title . . . other than –

....  
(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; . . .”

29 U.S.C. §§ 1081 provides in pertinent part:

“(a) Plans excepted from applicability of this part

This part shall apply to any employee pension benefit plan described in section 1003(a) of this title, (and not exempted under section 1003(b) of this title), other than -

....  
(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; . . .”

....  
(8) an individual account plan (other than a money purchase plan) . . .”

29 U.S.C. § 1082(e)(1) and (3) provides:

(e) Quarterly contributions required

(1) In general

If a defined benefit plan . . . which has a funded current liability percentage (as defined in subsection (d)(8) of this section) for the preceding plan year of less than 100 percent *fails to pay the full amount of a required installment for the plan year*, then the rate of interest charged to the funding standard account under subsection (b)(5) of this section with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of -

....

(3) Number of required installments; due dates  
For purposes of this subsection -

(A) Payable in 4 installments

There shall be 4 required installments for each plan year.

(B) Time for payment of installments

In the case of the following required installments: The due date is: 1st April 15 2nd July 15 3rd October 15 4th January 15 of the following year.

29 U.S.C. § 1082(f)(1)(A) & (B), (2) provides in pertinent part:

“(f) Imposition of lien where failure to make required contributions:

(1) In general

In the case of a plan covered under section 1321 of this title, if—

(A) *any person fails to make a required installment under subsection (e) of this section or any other payment required under this section before the due date for such installment or other payment, and*

(B) *the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds \$1,000,000, then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member. . . .”*

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B) of this section) of such plan is less than 100 percent.”

29 U.S.C. § 1082(f)(3) (1994) provides in part:

“(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.”

29 U.S.C. § 1082(f)(4)(B) (1994) provides in part:

“(B) Period of lien

The lien imposed by paragraph (1) [§ 1082(f)(1)] shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.”

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 1368 of this title shall apply with respect to a lien imposed by subsection (a) of this section and the amount with respect to such lien.”

29 U.S.C. § 1101 provides in pertinent part:

(a) Scope of coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title . . . other than -

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

29 U.S.C. § 1132(d)(1) provides in pertinent part:

“(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan.”

29 U.S.C. § 1368(c)(2) provides in pertinent part:

“(c) Priority

....

(2) In a case under title 11 . . . , the lien imposed under subsection (a) of this section shall be treated in the same manner as a tax due and owing to the United States for purposes of title 11 or section 3713 of title 31.”

**Restatement 2d of Contracts**

The Restatement 2d of Contracts § 205 provides in pertinent part:

“every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”

The Doctrine of Necessary Implication provides:

“in the absence of an express provision, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party’s right to receive the fruits of the contract.”